



August 1, 2001

Mr. Ron G. MacFarlane, Jr.  
Sifford, Anderson, Vice & MacFarlane, L.L.P.  
Bryan Tower, Suite 2050  
2001 Bryan Street  
Dallas, Texas 75201

OR2001-3336

Dear Mr. MacFarlane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150154.

The City of Cedar Hill Fire Department (the "department"), which you represent, received a request for information relating to a fire that occurred at a particular business on a specified date. You state that the department has released the responsive incident report to the requestor. You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the representative samples of information you submitted.<sup>1</sup>

Section 552.108 of the Government Code, the "law enforcement exception," excepts from public disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 excepts the information from disclosure. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

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<sup>1</sup>We note your representation that the responsive information includes a transcript of certain federal grand jury testimony and proceedings. You explain that you did not submit this information to this office because of the restrictions under which a federal prosecutor made it available to the department. This letter ruling assumes that the submitted "exemplars" of responsive information are truly representative of the responsive information as a whole, including the federal grand jury transcript. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

You inform this office that the requested information relates to an ongoing arson investigation. You also inform us that the information is maintained by the city fire marshal. You state that the fire marshal is a peace officer under article 2.12 of the Code of Criminal Procedure. You assert that the release of the requested information would interfere with an ongoing criminal investigation and anticipated prosecution of an arson case. Based on these representations, we find that you have demonstrated that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release the kind of information that is considered to be basic front-page information, including a detailed description of the offense, even if this information does not actually appear on the front page of a police report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the requested information under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

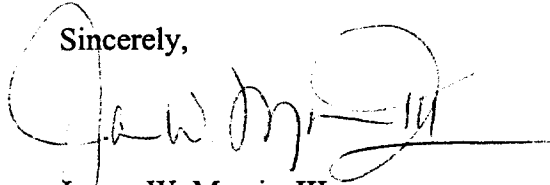
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J W Morris III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 150154

Enc: Submitted documents

c: Ms. Valerie Felner  
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(w/o enclosures)